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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,221	07/10/2003	Blaine L. Wieland	HRI0009	2379
832	7590	09/23/2005	EXAMINER	
BAKER & DANIELS LLP 111 E. WAYNE STREET SUITE 800 FORT WAYNE, IN 46802			BROWN, PETER R	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/617,221

Applicant(s)

WIELAND, BLAINE L.

Examiner

Peter R. Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2,4,7,8,10,11,13-15,18 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 and 23 is/are allowed.
- 6) ☒ Claim(s) 2,4,7,10,11,13,14,21 and 22 is/are rejected.
- 7) ☒ Claim(s) 8 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

In view of the newly discovered art, a new rejection has been formulated and set forth below. This action is non-final due to the new grounds of rejection.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21,2,4,7 are rejected under 35 U.S.C. 102(e) as being anticipated by Caveney et al.

Caveney et al (figures 14-29) shows structure as claimed. A pair (or more) of elongated members are joined at their ends in an overlapped relationship and interlocked with a third perpendicular member. The term “seating” in front of furniture does not add any structural limitations to the claim, and is given little patentable weight.

Claims 22,10,11,13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caveney et al.

While Caveney et al discloses the main function for the wall structure being for use with ball playing, he also states that they are suitable for other purposes, including screens and for constructional use in general (page 7, paragraph 125). It is the examiner's contention that one may readily utilize such a wall assembly to act

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as partitions in offices, or for cubicle arrangements, or the like. Often such partitions include padding thereon for sound dampening purposes, or even aesthetic purposes, and to have provided the wall panels of Caveney et al with upholstery components would have been well within the level of skill in the art. It is even conceivable that adding padding of some sort to the walls when utilized for their primary purpose would be beneficial in terms of adjusting the bounce of the ball or for limiting the sound that is produced.

It is noted that the term "upholstery components" is not limited to padding, and may include screws, staples, cloth, brackets and the like.

Claims 8 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 23 and 18 are allowed.

Applicant's arguments filed June 27, 2005 have been fully considered but they are not persuasive.

Contrary to applicant's arguments, merely reciting the device as an article of "seating" furniture, without defining structure, does not patentably distinguish over the structure of the prior art. The *structural* limitations set forth in the claims have been met by the prior art, and as indicated above, the claims in which the structure is defined as a seat and backrest have been objected to or allowed.

It is clear from figure 5 of Caveney et al that the ends of the panels overlap, as portions 24.2 of the end of one panel engage with portions 25.2 of the other panel. Whether they form a hinge or not is not an issue, as the limitation has been met. The resulting structure is a composite rigid support frame.

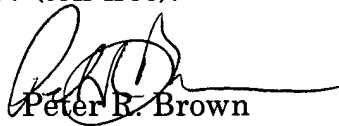
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter R. Brown whose telephone number is 571-272-6853. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Peter R. Brown  
Primary Examiner  
Art Unit 3636

prb